

1 **WORK ENVIRONMENT AND GRIEVANCE PROCEDURE**

2 **AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: LaVar Christensen**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill clarifies and amends grievance procedures for state employees in the executive
11 branch.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ incorporates in statute the state's policy and commitment to provide and maintain a
16 work environment free of abusive conduct;
- 17 ▶ requires annual training and cumulative reports to a legislative committee regarding
18 abusive conduct and grievances;
- 19 ▶ includes abusive conduct and other actions in the list of issues and conditions for
20 which an employee may file a grievance and complaint;
- 21 ▶ prohibits retaliatory action against an employee who represents or advocates for an
22 employee at any level of the grievance procedure as provided in statute;
- 23 ▶ amends deadlines for submitting certain grievances;
- 24 ▶ allows an employee to make a grievance after voluntary termination of employment
25 in certain circumstances;
- 26 ▶ allows an employee to submit a grievance to higher steps in the grievance process if
27 the grievance relates to a supervisor or administrator to whom the employee would



28 otherwise submit a grievance;
 29 ▶ provides for an administrative appeal to the administrator of the Career Service
 30 Review Office and for certain judicial review of a decision of the administrator of
 31 the office; and
 32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 67-19-44, as enacted by Laws of Utah 2015, Chapter 211
- 40 67-19a-101, as last amended by Laws of Utah 2013, Chapter 427
- 41 67-19a-202, as last amended by Laws of Utah 2015, Chapter 258
- 42 67-19a-301, as last amended by Laws of Utah 2013, Chapter 427
- 43 67-19a-303, as last amended by Laws of Utah 2013, Chapter 427
- 44 67-19a-401, as last amended by Laws of Utah 2010, Chapter 249
- 45 67-19a-402, as last amended by Laws of Utah 2010, Chapter 249
- 46 67-19a-402.5, as last amended by Laws of Utah 2015, Chapter 258
- 47 67-19a-406, as last amended by Laws of Utah 2013, Chapter 109
- 48 67-21-3.5, as enacted by Laws of Utah 2013, Chapter 427 and last amended by
- 49 Coordination Clause, Laws of Utah 2013, Chapter 427

50 ENACTS:

51 67-19a-102, Utah Code Annotated 1953

52 REPEALS AND REENACTS:

53 67-19a-302, as last amended by Laws of Utah 2013, Chapter 427



55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section 67-19-44 is amended to read:

57 **67-19-44. Abusive conduct.**

58 (1) As used in this section:

59 (a) (i) "Abusive conduct" means ~~[verbal, nonverbal, or physical conduct of an~~
 60 ~~employee to another employee that, based on its]~~ conduct or a course of conduct that, through
 61 acts, omissions, or both, and based on the conduct's pattern, duration, direct or indirect effect,
 62 severity, nature, [and] or frequency of occurrence, constitutes what a reasonable person [would
 63 ~~determine:]~~ would consider to be unfair, intolerable, and contrary to the state's policy of
 64 providing and maintaining a work environment free from abusive conduct, as provided in
 65 Section 67-19a-202.

66 (ii) "Abusive conduct" includes:

67 (A) ~~[is intended to cause]~~ repeated verbal abuse such as the use of derogatory remarks,
 68 insults, or epithets;

69 (B) verbal, nonverbal, or physical conduct that causes intimidation, humiliation, or
 70 unwarranted distress;

71 (C) the sabotage or undermining of work performance;

72 ~~[(B)]~~ (D) conduct that results in substantial physical, emotional, or psychological harm
 73 [as a result of intimidation, humiliation, or unwarranted distress; or];

74 ~~[(C) exploits an]~~

75 (E) conduct that adds to the employee's known physical or psychological disability[-];

76 (F) abuse of authority; or

77 (G) other unfair or wrongful employment practices as recognized and provided in Title
 78 67, Chapter 19a, Grievance Procedures.

79 ~~[(ii) A single act does not constitute abusive conduct, unless it is an especially severe~~
 80 ~~and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).]~~

81 (b) "Employee" means an employee of a state executive branch agency.

82 (c) "Physical harm" means the impairment of a person's physical health or bodily
 83 integrity, as established by competent evidence.

84 (d) "Psychological harm" means the impairment of a person's mental health, as
 85 established by competent evidence.

86 (2) By July 1, ~~[2015]~~ 2019, the department shall ~~[make a]~~ amend the department's rule,
 87 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with
 88 the definitions in Subsection (1).

89 (3) (a) ~~[On and after July 1, 2015, the]~~ The department shall provide annual training to

90 educate employees and supervisors about how to prevent abusive workplace conduct.

91 (b) The training shall include information on:

92 (i) what constitutes abusive conduct and the ramifications of abusive conduct;

93 (ii) resources available to employees who are subject to abusive conduct; and

94 (iii) the grievance process.

95 (4) (a) [~~On and after July 1, 2015, each~~] Each state agency shall provide professional
96 development training approved by the department to promote:

97 (i) ethical conduct; and

98 (ii) organizational leadership practices based in principles of integrity.

99 (b) A state agency may request assistance from the department in developing training
100 under this Subsection (4).

101 (5) (a) Employees shall participate in the training described in Subsections (3) and (4)
102 [in alternating years] annually.

103 (b) The requirement in Subsection (5)(a) includes full disclosure and notification to all
104 employees at the time of hiring and annually thereafter of the grievance procedures provided in
105 Title 67, Chapter 19a, Grievance Procedures.

106 (6) The department may use money appropriated to the department or access support
107 from outside resources to:

108 (a) develop policies against workplace abusive conduct; and

109 (b) enhance professional development training on topics such as:

110 (i) building trust;

111 (ii) effective motivation;

112 (iii) communication;

113 (iv) conflict resolution;

114 (v) accountability;

115 (vi) coaching;

116 (vii) leadership; or

117 (viii) ethics.

118 (7) This section does not:

119 (a) exempt or relieve a person from a liability, duty, or penalty provided by another
120 federal or state law;

- 121 (b) create a private right of action;
- 122 (c) expand or diminish rights or remedies available to a person before July 1, 2015; or
- 123 (d) expand or diminish grounds for discipline that existed before July 1, 2015.
- 124 (8) The department shall annually report to the Economic Development and Workforce
- 125 Services Interim Committee by no later than the November [2015] interim meeting regarding:
- 126 (a) the implementation of this section;
- 127 (b) recommendations, if any, to appropriately address and reduce workplace abusive
- 128 conduct or to change definitions or training required by this section; [~~and~~]
- 129 [~~(c) if the department finds a change in a definition or training is needed, the~~
- 130 ~~department's efforts to work with stakeholders to make recommendations for change.]~~
- 131 (c) an annual report of the administration of the total grievances filed and administered
- 132 by the department and the office for the year since the department made the last report to the
- 133 committee; and
- 134 (d) the extent to which the state policy of providing and maintaining a work
- 135 environment free from abusive conduct, as described in Section 67-19a-102, has been
- 136 achieved.

137 Section 2. Section **67-19a-101** is amended to read:

138 **67-19a-101. Definitions.**

139 As used in this chapter:

- 140 (1) (a) "Abusive conduct" means conduct or a course of conduct that, through acts,
- 141 omissions, or both, and based on the conduct's pattern, duration, direct or indirect effect,
- 142 severity, nature, or frequency of occurrence, constitutes what a reasonable person would
- 143 consider to be unfair, intolerable, and contrary to the state's policy of providing and
- 144 maintaining a work environment free from abusive conduct.
- 145 (b) "Abusive conduct" includes:
- 146 (i) repeated verbal abuse such as the use of derogatory remarks, insults, or epithets;
- 147 (ii) verbal, nonverbal, or physical conduct that causes intimidation, humiliation, or
- 148 unwarranted distress;
- 149 (iii) the sabotage or undermining of work performance;
- 150 (iv) conduct that results in substantial physical, emotional, or psychological harm;
- 151 (v) conduct that adds to an employee's known physical or psychological disability;

152 (vi) abuse of authority; or
153 (vii) other unfair or wrongful employment practices as recognized and provided in this
154 chapter.

155 ~~[(1)]~~ (2) "Administrator" means the person appointed under Section 67-19a-201 to
156 head the Career Service Review Office.

157 ~~[(2)]~~ (3) "Career service employee" means a person employed in career service as
158 defined in Section 67-19-3.

159 (4) "Constructive termination" means an employee's voluntary termination of
160 employment after having been subjected to intolerable conditions and, for understandable and
161 appropriate reasons, striving to individually endure and overcome those conditions.

162 (5) "Department" means the Department of Human Resource Management.

163 ~~[(3)]~~ (6) "Employer" means the state of Utah and all supervisory personnel vested with
164 the authority to implement and administer the policies of an agency.

165 (7) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure
166 to discover evidence that, through due diligence, could not have been discovered in time to
167 meet the applicable time period, misrepresentation or misconduct by the employer, or any other
168 reason justifying equitable relief and fairness as full due process requires to satisfy the
169 recognized policy of preventing abusive conduct in the workplace.

170 ~~[(4)]~~ (8) "Grievance" means:

171 (a) a complaint by a career service employee concerning any matter touching upon the
172 relationship between the employee and the employer;

173 (b) any dispute between a career service employee and the employer; ~~and~~

174 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory
175 action against the reporting employee[-]; and

176 (d) a complaint by a reporting employee that a public entity has engaged in abusive
177 conduct.

178 ~~[(5)]~~ (9) "Office" means the Career Service Review Office created under Section
179 67-19a-201.

180 ~~[(6)]~~ (10) "Public entity" ~~[is as]~~ means the same as that term is defined in Section
181 67-21-2.

182 ~~[(7)]~~ (11) "Reporting employee" means an employee of a public entity who alleges that

183 the public entity engaged in retaliatory action against the employee.

184 ~~[(8)]~~ (12) "Retaliatory action" means to do any of the following to an employee in
185 violation of Section 67-21-3:

186 (a) dismiss the employee;

187 (b) reduce the employee's compensation;

188 (c) fail to increase the employee's compensation by an amount that the employee is
189 otherwise entitled to or was promised;

190 (d) fail to promote the employee if the employee would have otherwise been promoted;

191 (e) cause the employee to ~~[resign by subjecting the employee to conditions that a~~
192 ~~reasonable person would consider intolerable; or]~~ experience conditions that a reasonable
193 person would consider intolerable, including abusive conduct; or

194 (f) threaten to take an action described in Subsections ~~[(8)]~~ (12)(a) through ~~[(e)]~~ (d).

195 ~~[(9)]~~ (13) "Supervisor" means the person:

196 (a) to whom an employee reports; or

197 (b) who assigns and oversees an employee's work.

198 Section 3. Section **67-19a-102** is enacted to read:

199 **67-19a-102. Grievance policy and complaint procedure.**

200 (1) It is the policy of the state of Utah to provide and maintain a work environment free
201 from abusive conduct.

202 (2) Management shall permit employees who allege abusive conduct or other
203 grievances to file a complaint and engage in a review process free from bias, collusion,
204 intimidation, or retaliation.

205 (3) (a) An aggrieved employee may file a written complaint in accordance with this
206 chapter.

207 (b) A complaint described in Subsection (3)(a) shall be promptly and fairly
208 administered in accordance with this chapter.

209 (4) When an employee files an abusive conduct grievance, the department shall
210 conduct an investigation as necessary to:

211 (a) substantiate all claims and fulfill the department's responsibilities under this
212 chapter; and

213 (b) prevent abusive conduct.

214 Section 4. Section **67-19a-202** is amended to read:

215 **67-19a-202. Powers -- Scope of authority.**

216 (1) (a) The office shall serve as the final administrative body to review a grievance
217 from a career service employee and an agency of a decision regarding:

- 218 (i) a dismissal;
- 219 (ii) a demotion;
- 220 (iii) a suspension;
- 221 (iv) a reduction in force;
- 222 (v) a dispute concerning abandonment of position;
- 223 (vi) a wage grievance if an employee is not placed within the salary range of the
224 employee's current position;

225 (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management
226 Act; ~~or~~

227 (viii) except as provided by Subsection (1)(c)(iii), equitable administration of the
228 following benefits:

- 229 (A) long-term disability insurance;
- 230 (B) medical insurance;
- 231 (C) dental insurance;
- 232 (D) post-retirement health insurance;
- 233 (E) post-retirement life insurance;
- 234 (F) life insurance;
- 235 (G) defined contribution retirement;
- 236 (H) defined benefit retirement; and
- 237 (I) a leave benefit[-];
- 238 (ix) abusive conduct; or
- 239 (x) disciplinary action imposed subsequent to an abusive conduct investigation under
240 this chapter.

241 (b) The office shall serve as the final administrative body to review a grievance by a
242 reporting employee alleging retaliatory action.

243 (c) The office may not review or take action on:

- 244 (i) a personnel matter not listed in Subsection (1)(a) or (b);

245 (ii) a grievance listed in Subsection (1)(a) or (b) that alleges discrimination or
246 retaliation related to a claim of discrimination that is a violation of a state or federal law for
247 which review and action by the office is preempted by state or federal law; or

248 (iii) a grievance related to a claim for which an administrative review process is
249 provided by statute and administered by:

250 (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and
251 Insurance Benefit Act;

252 (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20,
253 Public Employees' Benefit and Insurance Program Act; or

254 (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,
255 Public Employees' Long-Term Disability Act.

256 (2) The time limits established in this chapter supersede the procedural time limits
257 established in Title 63G, Chapter 4, Administrative Procedures Act.

258 Section 5. Section **67-19a-301** is amended to read:

259 **67-19a-301. Charges submissible under grievance procedure.**

260 (1) This grievance procedure may only be used by career service employees who are
261 not:

- 262 (a) public applicants for a position with the state's work force;
- 263 (b) public employees of the state's political subdivisions;
- 264 (c) public employees covered by other grievance procedures; or
- 265 (d) employees of state institutions of higher education.

266 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to
267 use this grievance procedure, the administrator shall resolve the question or dispute.

268 (b) The administrator's decision under Subsection (2)(a) is reviewable only by the
269 Court of Appeals.

270 (3) Any career service employee may submit a grievance based upon a claim or charge
271 of injustice or oppression, including dismissal from employment, resulting from an act,
272 occurrence, omission, or condition for solution through the grievance procedures set forth in
273 this chapter.

274 (4) A reporting employee who desires to bring an administrative claim of retaliatory
275 action shall use the grievance procedure described in Section [67-19a-402.5](#).

276 (5) A career service employee who desires to bring a grievance shall use and follow the
277 grievance procedure described in Part 3, Grievance Procedures, and Part 4, Procedural Steps to
278 Be Followed by Aggrieved Employee.

279 Section 6. Section **67-19a-302** is repealed and reenacted to read:

280 **67-19a-302. Levels of procedure.**

281 (1) The administration of all grievances and complaints under this chapter occurs on
282 the following four levels:

- 283 (a) Level 1 - the supervisor;
- 284 (b) Level 2 - the division director or the director's designee;
- 285 (c) Level 3 - the agency director or the director's designee; and
- 286 (d) Level 4 - the office.

287 (2) (a) Except as provided in Subsection (2)(b), an employee shall file a grievance or
288 complaint at Level 1 and proceed through the levels of procedure within the applicable time
289 limits provided in this chapter.

290 (b) If a supervisor or division director is the subject of a grievance or complaint, the
291 employee may proceed directly to Level 2 or Level 3, respectively.

292 (3) A career service employee may advance all grievances to Level 3.

293 (4) In accordance with Section **67-19a-402.5** and subject to Section **67-21-4**, a
294 reporting employee may file a grievance alleging retaliatory action directly at Level 4.

295 (5) (a) All matters described in Section **67-19a-202** are subject to an administrative
296 appeal to the office.

297 (b) In an administrative appeal of a grievance filed under Subsection
298 **67-19a-202(1)(a)(ix)**, the administrator shall conduct an administrative review of the
299 department's abusive conduct files and records in accordance with this Subsection (5).

300 (c) The department shall make the abusive conduct investigative file available for the
301 administrator's review.

302 (d) The administrator may request additional relevant documents and interview the
303 investigator who conducted the investigation.

304 (e) The administrator shall substantiate the investigative findings and conclusions if,
305 based on a review of the file, the findings and conclusions are reasonable and rational.

306 (f) If the investigative findings and conclusions are not reasonable and rational, the

307 administrator may overturn the findings and remand the investigation to the department for
308 further review, with instructions.

309 (g) To preserve privacy of employees and participants in the investigation, the
310 investigative findings and the decision upon administrative review may be kept confidential.

311 (h) (i) Whether an administrative appeal of an abusive conduct grievance is subject to
312 an evidentiary hearing is at the discretion of the administrator and based upon the
313 administrator's findings.

314 (ii) The administrator's decision described in Subsection (5)(h)(i) regarding the
315 investigative file is final and may not be appealed.

316 Section 7. Section **67-19a-303** is amended to read:

317 **67-19a-303. Employees' rights in grievance procedure.**

318 (1) For the purpose of submitting and advancing a grievance, a career service
319 employee, or a reporting employee alleging retaliatory action, may:

320 (a) obtain assistance by a representative of the employee's choice to act as an advocate
321 at any level of the grievance procedure;

322 (b) request a reasonable amount of time during work hours to confer with the
323 representative and prepare the grievance; and

324 (c) call other employees as witnesses at a grievance hearing.

325 (2) The state shall allow employees to attend and testify at the grievance hearing as
326 witnesses if the employee has given reasonable advance notice to the employee's immediate
327 supervisor.

328 (3) No person may take any reprisals against a career service employee or a reporting
329 employee for:

330 (a) use of or participation in a grievance procedure described in this chapter[-]; or

331 (b) representing and providing assistance to a career service employee as an advocate
332 in accordance with Subsection (1)(a).

333 (4) (a) The employing agency of an employee who files a grievance may not place
334 grievance forms, grievance materials, correspondence about the grievance, agency and
335 department replies to the grievance, or other documents relating to the grievance in the
336 employee's personnel file.

337 (b) The employing agency of an employee who files a grievance may place records of

338 disciplinary action in the employee's personnel file.

339 (c) If any disciplinary action against an employee is rescinded through the grievance
340 procedures described in this chapter, the agency and the Department of Human Resource
341 Management shall remove the record of the disciplinary action from the employee's agency
342 personnel file and central personnel file.

343 (d) An agency may maintain a separate grievance file relating to an employee's
344 grievance, but shall discard the file after three years.

345 Section 8. Section **67-19a-401** is amended to read:

346 **67-19a-401. Time limits for submission and advancement of grievance by**
347 **aggrieved employee -- Voluntary termination of employment -- Group grievances.**

348 (1) [~~Subject to the provisions of Part 3, Grievance Procedures, and the restrictions~~
349 ~~contained in this part,]~~ When a career service employee [may have] files a grievance [addressed
350 by following the procedures] at Level 1, as described in Section 67-19a-302, the employee
351 shall advance the grievance through the proper levels of procedure specified in this [part]
352 chapter.

353 [~~(2) The employee and the person to whom the grievance is directed may agree in~~
354 ~~writing to waive or extend grievance steps specified under Subsection 67-19a-402(1), (2), or~~
355 ~~(3) or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.]~~

356 [~~(3) Any writing made under Subsection (2) shall be submitted to the administrator.]~~

357 [(4)] (2) Except as provided under [~~Subsection (6)~~] Subsections (7) and (8), if the
358 employee fails to advance the grievance to the next procedural step within the time limits
359 established in this part:

360 (a) the employee [~~waives~~] may have waived the right to advance the grievance or to
361 obtain judicial review of the grievance; and

362 (b) the grievance [~~is~~] may be considered to be settled based on the decision made at the
363 last procedural step unless otherwise excused by what may constitute harmless error, excusable
364 neglect, or other fair and equitable considerations.

365 [(5) (a) An] (3) An employee may [submit] file a grievance for review under this
366 chapter [only if the employee submits], if the employee, in general, submits the grievance
367 within 30 working days after:

368 [(i) within 20 working days after] (a) the event giving rise to the grievance or, if a

369 pattern, practice, or ongoing course of conduct or work environment gives rise to the grievance,
370 the most recent event within the pattern, practice, course of conduct, or work environment; or

371 ~~[(ii) within 20 working days after]~~ (b) the employee has actual or effective knowledge
372 of:

373 (i) the event giving rise to the grievance~~[-]~~ or, if a pattern, practice, ongoing course of
374 conduct, or work environment gives rise to the grievance, the most recent event within the
375 pattern, practice, course of conduct, or work environment; and

376 (ii) the procedures and entitlements provided in this chapter.

377 ~~[(b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more~~
378 ~~than one year after the event giving rise to the grievance.]~~

379 (4) The employer shall, at all times, meet and satisfy the standard and policy of
380 maintaining a work environment free of abusive conduct or other wrongful employment
381 practices as provided in Section [67-19a-202](#).

382 (5) In determining whether an employee timely files a grievance, consideration shall be
383 given to whether the employee reasonably delayed the filing of a grievance and sought to
384 overcome or endure otherwise intolerable working conditions.

385 (6) The time limits for submission and advancement of a grievance do not apply if the
386 employee meets the requirements for excusable neglect or other equitable considerations as
387 determined by the administrator.

388 ~~[(6)]~~ (7) The provisions of Subsections ~~[(4) and (5)(a)]~~ (2) and (3) do not apply if the
389 employee meets the requirements for excusable neglect established by rule.

390 ~~[(7)]~~ (8) (a) ~~[A]~~ Except in the case of constructive discharge, as provided in Subsection
391 (8)(b), a person who has voluntarily terminated the person's employment with the state may not
392 submit a grievance after the person has terminated the employment.

393 (b) Notwithstanding the filing requirements of this section, in the case of constructive
394 discharge, the former employee:

395 (i) may, within 30 days, submit a grievance after the constructive discharge; and

396 (ii) retains a right to the entitlements and procedures in this chapter.

397 ~~[(8)]~~ (9) (a) If several employees allege the same grievance, the employees may submit
398 a group grievance by following the procedures and requirements of this chapter.

399 (b) In submitting a group grievance, each aggrieved employee shall sign the grievance.

400 (c) The administrator may not treat a group grievance as a class action, but may select
401 one aggrieved employee's grievance and address that grievance as a test case.

402 Section 9. Section **67-19a-402** is amended to read:

403 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

404 (1) (a) [~~A~~] Subject to the provisions and levels of procedure provided in Section
405 67-19a-302, a career service employee who has a grievance shall submit the grievance in
406 writing to:

- 407 (i) the employee's supervisor; and
- 408 (ii) the administrator.

409 (b) Within five working days after receiving a written grievance, the employee's
410 supervisor may issue a written decision on the grievance.

411 (2) (a) If the employee's supervisor fails to respond to the grievance within five
412 working days or if the aggrieved employee is dissatisfied with the supervisor's written decision,
413 the employee may advance the written grievance to the employee's agency or division director
414 within 10 working days after the expiration of the period for response or receipt of the written
415 decision, whichever is first.

416 (b) If a career service employee has a grievance that applies to the conduct or behavior
417 of the employee's supervisor or conditions that the employee's supervisor creates or allows, the
418 employee may submit the grievance in writing at Level 2, as described in Section 67-19a-302.

419 [~~(b)~~] (c) Within five working days after receiving the written grievance, the employee's
420 agency or division director may issue a written response to the grievance stating the decision
421 and the reasons for the decision.

422 (3) (a) If the employee's agency or division director fails to respond to the grievance
423 within five working days after its submission, or if the aggrieved employee is dissatisfied with
424 the agency or division director's written decision, the employee may advance the written
425 grievance to the employee's department head within 10 working days after the expiration of the
426 period for decision or receipt of the written decision, whichever is first.

427 (b) If a career service employee has a grievance that applies to the conduct or behavior
428 of the employee's agency or division director or conditions that the employee's agency or
429 division director creates or allows, the employee shall submit the grievance in writing at Level
430 3, as described in Section 67-19a-302.

431 ~~[(b)]~~ (c) Within 10 working days after the employee's written grievance is submitted,
432 the department head may issue a written response to the grievance stating the decision and the
433 reasons for the decision.

434 ~~[(c)]~~ (d) The decision of the department head is final in all matters except those matters
435 that the office may review under the authority of Part 3, Grievance Procedures.

436 (4) If the written grievance submitted to the employee's department head meets the
437 subject matter requirements of Section 67-19a-202 and if the employee's department head fails
438 to respond to the grievance within 10 working days after submission, or if the aggrieved
439 employee is dissatisfied with the department head's written decision, the employee may
440 advance the written grievance to the administrator within 10 working days after the expiration
441 of the period for decision or receipt of the written decision, whichever is first.

442 (5) The department head shall administer and issue a final response to the grievance
443 stating the decision and the reasons for the decision within six months after the day on which
444 the employee files and submits the grievance and subject to an extension of not more than 60
445 days if reasonably necessary and requested by the department head.

446 Section 10. Section 67-19a-402.5 is amended to read:

447 **67-19a-402.5. Procedural steps to be followed by reporting employee alleging**
448 **retaliatory action.**

449 (1) A reporting employee who desires to assert an administrative grievance of
450 retaliatory action:

451 (a) shall submit the grievance in writing within ~~[20]~~ 30 days after the day on which the
452 retaliatory action occurs;

453 (b) is not required to comply with Section 63G-7-402 to file the grievance; and

454 (c) is subject to the provisions of Section 67-21-4.

455 (2) (a) When a reporting employee files a grievance with the administrator under
456 Subsection (1), the administrator shall initially determine:

457 (i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah
458 Protection of Public Employees Act, to bring the grievance and use the grievance procedure;

459 (ii) whether the office has authority to review the grievance;

460 (iii) whether, if the alleged grievance were found to be true, the reporting employee
461 would be entitled to relief under Subsection 67-21-3.5(2); and

462 (iv) whether the reporting employee has been directly harmed.
463 (b) To make the determinations described in Subsection (2)(a), the administrator may:
464 (i) hold an initial hearing, where the parties may present oral arguments, written
465 arguments, or both; or
466 (ii) conduct an administrative review of the grievance.
467 (3) (a) If the administrator holds an initial hearing, the administrator shall issue a
468 written decision within 15 days after the day on which the hearing is adjourned.
469 (b) If the administrator chooses to conduct an administrative review of the grievance,
470 the administrator shall issue the written decision within 15 days after the day on which the
471 administrator receives the grievance.
472 (4) (a) If the administrator determines the office has authority to review the grievance,
473 the administrator shall provide for an evidentiary hearing in accordance with Section
474 67-19a-404.
475 (b) The administrator may dismiss the grievance, without holding a hearing or taking
476 evidence, if the administrator:
477 (i) finds that, even if the alleged grievance were found to be true, the reporting
478 employee would not be entitled to relief under Subsection 67-21-3.5(2); and
479 (ii) provides the administrator's findings, in writing, to the reporting employee.
480 (c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act,
481 in taking action under this section.
482 (5) A decision reached by the office in reviewing a retaliatory action grievance from a
483 reporting employee may be appealed directly to the Utah Court of Appeals.
484 (6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and
485 attorney fees, accrued at the appellate court level, to a prevailing employee.
486 (b) A court may not order the office to pay costs or attorney fees under this section.
487 Section 11. Section 67-19a-406 is amended to read:
488 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
489 **before hearing officer -- Evidentiary and procedural rules.**
490 (1) (a) The administrator shall employ a certified court reporter to record the hearing
491 and prepare an official transcript of the hearing.
492 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and

493 pleadings received by the hearing officer are the official record of the proceeding.

494 (2) (a) The agency has the burden of proof in all grievances.

495 (b) The agency must prove the agency's case by substantial evidence.

496 (3) (a) The hearing officer shall issue a written decision within 20 working days after
497 the hearing is adjourned.

498 (b) If the hearing officer does not issue a decision within 20 working days, the agency
499 that is a party to the grievance is not liable for any claimed back wages or benefits after the date
500 the decision is due.

501 (4) The hearing officer may:

502 (a) not award attorney fees or costs to either party;

503 (b) close a hearing by complying with the procedures and requirements of Title 52,
504 Chapter 4, Open and Public Meetings Act;

505 (c) seal the file and the evidence produced at the hearing if the evidence raises
506 questions about an employee's character, professional competence, or physical or mental
507 health;

508 (d) grant continuances according to rule; and

509 (e) decide a motion, an issue regarding discovery, or another issue in accordance with
510 this chapter.

511 (5) (a) A hearing officer shall affirm, rescind, or modify agency action.

512 (b) (i) If a hearing officer does not affirm agency action, the hearing officer shall order
513 back pay and back benefits that the grievant would have received without the agency action.

514 (ii) An order under Subsection (5)(b)(i) shall include:

515 (A) reimbursement to the grievant for premiums that the grievant paid for benefits
516 allowed under the Consolidated Omnibus Reconciliation Act of 1985; and

517 (B) an offset for any state paid benefits the grievant receives because of the agency
518 action, including unemployment compensation benefits.

519 (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount
520 of back pay and benefits awarded a grievant because of income that the grievant earns during
521 the grievance process.

522 (6) An employee who files a grievance in accordance with this chapter may appeal a
523 decision of the administrator in reviewing a grievance under this section directly to the Utah

524 Court of Appeals within 15 days after the day on which the employee receives notice and the
525 decision of the administrator.

526 Section 12. Section 67-21-3.5 is amended to read:

527 **67-21-3.5. Administrative review of adverse action against a public entity**
528 **employee.**

529 (1) A public entity employee who believes that the employee's employer has taken
530 retaliatory action against the employee in violation of this chapter may file a grievance with the
531 Career Service Review Office in accordance with Section 67-19a-402.5 and subject to Section
532 67-21-4.

533 (2) If the Career Service Review Office determines that retaliatory action is taken in
534 violation of this chapter against the public entity employee, the Career Service Review Office
535 may order:

536 (a) reinstatement of the public entity employee at the same level held by the public
537 entity employee before the retaliatory action;

538 (b) the payment of back wages, in accordance with Subsection 67-19a-406(5)(b);

539 (c) full reinstatement of benefits;

540 (d) full reinstatement of other employment rights; or

541 (e) if the retaliatory action includes failure to promote, as described in Subsection
542 67-19a-101[(8)](12)(d), a pay raise that results in the employee receiving the pay that the
543 employee would have received if the person had been promoted.

544 (3) A public entity employer has the burden to prove by substantial evidence that the
545 public entity employer's action was justified.

546 (4) A public entity employee or public entity employer may appeal a determination of
547 the Career Service Review Office as provided in Section 67-19a-402.5.

Legislative Review Note
Office of Legislative Research and General Counsel